



THE CITY OF NEW YORK
LAW DEPARTMENT

ZACHARY W. CARTER
Corporation Counsel

100 CHURCH STREET
NEW YORK, NY 10007

Elissa Fudim
Senior Counsel
Phone: (212) 356-2335
Fax: (212) 356-3509
efudim@law.nyc.gov

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BY ECF

Honorable Peggy Kuo, U.S.M.J.
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Andy James v. City of New York et. al., 15-CV-03657-ERK-PK

Dear Judge Kuo:

I write to briefly respond to the sur-reply letter filed by Mr. Lumer on September 12, 2016 in further support of his application for attorneys' fees. Mr. Lumer asks the Court to take note of Bailey v. Pataki, 2016, WL 3545941, at *6 (S.D.N.Y. June 16, 2016) in further support of his request for attorneys' fees calculated using a rate of \$500 an hour. For the reasons set forth herein, Bailey should not affect the Court's consideration in this case.

Bailey was an complicated case, involving more than 50 parties, 6 consolidated actions, and 8 years of litigation, which went up to the Second Circuit. "The outcome of this case resulted in 'ground-breaking conclusions of law' that constituted 'a new rule of liability,' and serves "a significant public interest." Id., at *20, 24. Further, Bailey was not a § 1983 police liability case. Rather, Bailey was a § 1983 case concerning involuntary commitment made pursuant to § 9.27 of the New York Mental Hygiene Law. In all material respects, Bailey is different than the present case, in which a single plaintiff sued three individual police officers and the City of New York alleging a garden variety false arrest claim, which was resolved early in the litigation, prior to a single deposition. The \$500 and \$600 rates applied in Bailey are not appropriate here. For the appropriate rate and hours, defendants refer the Court to their Opposition at Docket Entry # 28.

Respectfully submitted,

/s/

Elissa Fudim (EF6756)
Senior Counsel

CC: Michael Lumer, Esq. (BY ECF)
Plaintiff's Counsel